DAVID D. BEAL

IBLA 84-833 Decided December 23, 1985

Appeal from a decision of the Anchorage, Alaska, District Office, Bureau of Land Management, declaring placer mining claims null and void, and rejecting recordation filings. AA 41577, 41580 - 41594, 48329 - 43830, 44592 - 44593.

Affirmed.

1. Mining Claims: Lands Subject to -- Segregation -- State Selections
Under the "notation" or "tract book" rule, when a state selection application is filed and noted on official land office records, the notation of the application has the effect of segregating the land from all subsequent appropriations, including locations under the mining laws, regardless of whether the selection application was void or voidable.

2. Estoppel -- Mining Claims: Lands Subject to

Neither laches nor estoppel will bar a decision that a mining claim is void from its inception, notwithstanding the claimant's good faith expenditure of labor and money for the benefit of the claim. BLM has no affirmative duty to mineral locators to promptly check the legal status of every claim filed with them and to apprise a claimant of its findings; and claimant's reliance upon erroneous information from BLM employees cannot create rights not authorized by law.

APPEARANCES: David D. Beal, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

David D. Beal appeals from a July 13, 1984, decision of the Anchorage, Alaska, District Office, Bureau of Land Management (BLM), rejecting recordation filings for the Cripple Creek #3, #6 - #20 (AA 41577, 41580 through 41594), John Paul II (AA 43829), Morning Star Bonanza (AA 43830), and Porcupine Creek #1 and #2 (AA 44592 and 44593) placer claims and declaring

the claims to be null and void ab initio because the lands upon which they had been located were segregated from mineral entry at the time of location.

The 20 claims at issue were located between December 8, 1980, and August 5, 1981, in secs. 29, 31, 32, and 33, T. 10 N., R. 2 W., Seward Meridian, near Hope, Alaska. 1/ Through various conveyances in July 1981 and January 1982, these claims were transferred to Beal. In its July 13, 1984, decision, BLM rejected the 1983 mining claim recordation filings and declared the claims to be null and void ab initio for the following reasons: (1) State selection application A-053730, as amended, segregated the lands from mineral entry pursuant to 43 CFR 2627.4(b), on January 6, 1972; and (2) the Cripple Creek claims were also located at a time when the lands were closed to location because a notation on the master title plat for Cook Inlet Region, Inc.'s (CIRI) application AA-8098-36 (an invalid selection relinquished Feb. 13, 1981) segregated the land from mineral entry pursuant to the "notation rule." 2/

In his statement of reasons, Beal contends BLM has repeatedly responded to his prior inquiries by assuring him the claims were indeed valid. He complains that substantial exploration and development costs made in reliance on those statements will be lost if the claims are held to be invalid. He also argues the Department should indemnify him and others for the gross negligence perpetrated by BLM employees.

[1] The first issue is whether state selection application A-053730 independently segregates the selected lands from location of mining claims. On September 8, 1965, the State of Alaska filed its application pursuant to section 6(b) of the Alaska Statehood Act, 72 Stat. 339 embracing certain sections in T. 10 N., R. 2 W., SM. The application was amended on January 6, 1972, to include all public land in T. 10 N., R. 2 W., SM, which includes lands at issue. Neither BLM's decision in this case nor the application recognizes these lands as having been part of the Chugach National Forest since 1909. While 43 CFR 2091.6-4 and 43 CFR 2627.4(b), in effect since 1971, will attribute segregative effect through the filing of a state selection application, national forest lands are not subject to selection under section 6(b) of the Statehood Act. B. J. Toohey, 88 IBLA 66, 92 I.D. 317 (1985).

1/ Cripple Creek #3 and #6 - #20 were located on Dec. 8, 1980, by Phillip Robinette and Christine Crouch, and recorded with BLM on Dec. 22, 1980. John Paul II and Morning Star Bonanza were located by Christine and Wayne Crouch on June 11, 1981, and recorded with BLM on June 29, 1981. Porcupine Creek #1 and #2 were located on Aug. 5, 1981, by Arthur and Eva Manginelli and recorded with BLM on Aug. 31, 1981. John Paul II and Morning Star Bonanza appear to embrace some of the same lands in sec. 32 occupied by the claims Cripple Creek #7 - #10.

2/ Although BLM identified the latter reason to be applicable only to the Cripple Creek claims, the record does not indicate when the notation for the regional corporation selection application was expunged from the master title plat and whether the rationale was applicable to the other claims at issue.

Notwithstanding the fact the described lands were within a National Forest, it is an established principle that when a state selection application is noted on official land office records, the mere notation of the application has the effect of segregating the land from all subsequent appropriations, including locations under the mining laws, even if the selection was void. David Cavanagh, 89 IBLA 285, 92 I.D. 564 (1985); B. J. Toohey, supra. This is the so-called "notation" or "tract book" rule, characterized by the Board in Toohey as an equal protection doctrine grounded in fairness to the public at large. 88 IBLA at 78, 92 I.D. at 324. Nevertheless, the Board recognized in Toohey that invocation of the rule should be subject to scrutiny to determine if it was properly applied. Id.

When the mining claims in question were located, the notation of the state selection application had been entered on both the Master Title Plat (MTP) for T. 10 N., R. 2 W., SM, and the MTP Supplement for secs. 28, 29, 32, and 33. The entry on these plats was "A 053730 SS Entire Tp." The companion historical index and other land records offer no indication that the application had been rejected at the time or that a determination that the subject lands were not properly segregated by the selection application had been made. The fact that the state selection application was recorded on the MTP resulted in a prima facie segregative effect. The ordinary citizen contemplating a proposed use of the public lands would, upon examination of the MTP, assume the land at issue was unavailable as the MTP indicates the land to be included in a pending state selection application. With nothing on the face of the MTP which would suggest the state selection application was invalid, the notation rule would apply. 3/ See David Cavanagh, supra at 295-6, 92 I.D. at 570. Therefore, the lands embraced by appellant's mining claims were not open to mineral entry at the time of location. 4/ BLM properly declared the mining claims null and void and rejected appellant's recordation filings. 5/

3/ Section 6(a) of the Alaska Statehood Act provides for selection of lands from within the National Forest. 72 Stat. 339 at 340.

4/ If there has been no further withdrawal from mineral entry, upon adjudication of the state selection application and removal of the notation from the MTP, the land may again be open to mineral entry.

5/ BLM also considered CIRI's application to create a segregative effect on the basis of the notation rule. However, the facts in this case are similar to those in Cavanagh where the Board held the notation rule cannot be invoked on the basis of a regional corporation selection filed pursuant to 43 CFR Subpart 2652. 89 IBLA at 302-303, 92 I.D. at 574. Unlike state or other miscellaneous selections, the regulations governing regional selection applications, 43 CFR Subpart 2652, do not attribute a segregative effect to filing of such an application. Where the knowledge imputed to the public is that a regional selection does not necessarily segregate the land, the notation of such application on the MTP would not logically deter attempted appropriations of the lands embraced by the selection. Since CIRI's selection application was filed under the authority of 43 CFR Subpart 2652, the notation rule does not apply to segregate the lands selected. However, this conclusion does not affect the outcome because the lands had been noted as being subject to the state selection application.

[2] Appellant argues an estoppel defense to BLM's decision to declare the claims null and void, i.e., he has relied to his detriment on BLM's alleged recognition of the validity of the claims. However, appellant has presented no factual or legal arguments which can be considered a basis for an estoppel defense. First, BLM is under no affirmative duty to promptly check the legal status of every claim filed and apprise the owner of a mining claim of its conclusions. 43 CFR 3833.5(f); Bill and Judy Bass, 84 IBLA 233 (1984). Second, reliance upon information or advice provided by Federal employees cannot create rights not authorized by law. Silver Buckle Mines, Inc., 84 IBLA 306 (1985). Moreover, estoppel does not lie here because the locators of the claims and Beal had constructive knowledge of the public record which noted the lands as being segregated from mineral entry. See Mac A. Stevens, 84 IBLA 124 (1984). As a general rule, the Government holds the public lands in trust for all people, and is not to be deprived of this property by such defenses as laches and estoppel. Hallenbeck v. Kleppe, 590 F.2d 852, 855 (10th Cir. 1979), citing United States v. California, 332 U.S. 19, 40 (1946). Finally, BLM has no duty at common law nor statutory authority to compensate a claimant for expenses incurred in developing claims which are subsequently declared null and void ab initio.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed is affirmed.

R. W. Mullen
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge